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2006 JUN -1 AM 10:25

UNITED STATES
BANKRUPTCY COURT
PATRICIA GRAY, CLERK

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:	)	BK-S-06-10725-LBR
	)	Chapter 11
USA COMMERCIAL MORTGAGE COMPANY)	
Debtor)	
In re:	)	BK-S-06-10726-LBR
	)	Chapter 11
USA CAPITAL REALTY ADVISORS, LLC,)	
Debtor)	
In re:	)	BK-S-06-10727-LBR
	)	Chapter 11
USA CAPITAL DIVERSIFIED TRUST DEED)	
FUND, LLC,)	
Debtor)	
In re:	)	BK-S-06-10728-LBR
	)	Chapter 11
USA CAPITAL FIRST TRUST DEED FUND,)	
LLC,)	
Debtor)	
In re:	)	BK-S-06-10729-LBR
	)	Chapter 11
USA SECURITIES, LLC,)	
Debtor)	
Affects:)	
<input type="checkbox"/> All Debtors)	
<input checked="" type="checkbox"/> USA Commercial Mortgage Co.)	
<input type="checkbox"/> USA Securities, LLC)	
<input type="checkbox"/> USA Capital Realty Advisors, LLC)	
<input type="checkbox"/> USA Capital Diversified Trust Deed)	
<input type="checkbox"/> USA First Trust Deed Fund, LLC)	

Date: 6/5/06
Time: 9:30 am

**REPLY TO OPPOSITION TO MOTIONS FOR RELEASE OF FUNDS FROM INVESTOR
ACCOUNT FILED BY: JASPER BENINCASA AND FLOCERFIDA BENINCASA**

COME NOW JASPER BENINCASA JR. and FLOCERFIDA BENINCASA (BENINCASA) and hereby files their reply to opposition (Docket #326) to Motion for release of funds from investor account. This reply is based upon the Points and Authorities attached hereto.

POINTS AND AUTHORITIES

The Debtor's make reference to the fact that USA Capital, prior to the bankruptcy petition, Brokered assignments of fractional loan interests from Direct Lenders to other Direct Lenders. USA Capital is no longer brokering assignments and should not attempt to consummate the Transaction since **no deeds of trust have been recorded and there has been no transfer of funds**. BENINCASA funds have been held without being transferred to "Assignors" and should be returned as per:

NRS 645B.175 para. 2 which states:

" Except as otherwise provided in this section, the amount held in trust pursuant to subsection 1 must be released:

- a) Upon completion of the loan, including proper recordation of the respective interests or release, or upon completion of the transfer of the ownership or beneficial interest therein, to the debtor or his designee less the amount due the mortgage broker for the payment of any fee or service charge;
- b) If the loan or the transfer thereof is not consummated, to each investor who furnished the money held in trust; or
- c) Pursuant to any instructions regarding the escrow account."

NRS 645B.175 para. 8 which states:

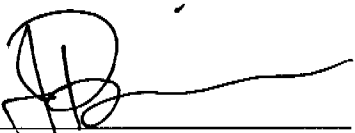
"Money received by a mortgage broker and his mortgage agents pursuant to this section from a person who is not associated with the mortgage broker may be held in trust for not more than 45 days before an escrow account must be opened in connection with the loan. If, within this 45-day period, the loan or the transfer therefore is not consummated, the money must be returned within 24 hours. If the money is so returned, it may not be reinvested with the mortgage broker for at least 15 days".

Argument

JASPER BENINCASA and FLOCERFIDA BENINCASA attempted to invest \$110,000.00 in 3 assignments with a check that cleared the bank on April 12, 2006. According to the debtor, \$75,000.00 of the \$110,000.00 were traced to the now DIP account and the other \$35,000.00 which listed USA CAPITAL FIRST TRUST DEED FUND and signed by **Joseph Milanowski**, as the "Assignor", cannot be traced to the DIP account and no deed of trust has been recorded for this Assignment. It appears that USA Capital would have a special interest in liquidating this Assignment as the loan is listed as "non-performing" by the debtor who prior to the filing, failed to disclose this information. It is apparent that the debtor has engaged in criminal activity for which they should be criminally prosecuted. These crimes were allegedly committed prior to the April 13th filing and the criminals are currently hiding behind a shield of bankruptcy. The new Management team, claiming to turn USA Capital around, now opposes the release of funds, which under Nevada Law should be released back to JASPER BENINCASA and FLOCERFIDA BENINCASA. Thomas Allison testified that he would do everything possible to get the Investors' money back and now blindly opposes a motion to release funds which under NRS 645B.175 para. 2 and NRS 645B.175 para. 8 should be returned.

CONCLUSION

The BENINCASA funds were never transferred to anyone; there were never any recordation of Assignments and under Nevada Law, BENINCASA funds should be returned without delay.


/s/ _____
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CERTIFICATE OF SERVICE

I, Jasper Benincasa, hereby certify that a true and correct copy of the foregoing was forwarded to:

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